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IN THE

Supreme Court of the United States

No. 854

CENTRAL SCHOOL DISTRICT NO. 1 OF THE TOWNS OF COLCHESTER, HAMDEN, HANCOCK, WALTON, ANDES AND TOMPKINS, DELAWARE COUNTY, NEW YORK,

Petitioner,

vs.

THE STATE OF NEW YORK.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI.

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THE REPORTER COMPANY, INC., Walton, N. Y.—UN 5-4131—1964

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Petitioner,

vs.

THE STATE OF NEW YORK.

BRIEF FOR PETITIONER.

Central School District No. 1 of the Towns of Colchester, Hamden, Hancock, Walton, Andes and Tompkins, Delaware County, New York, by Francis R. Paternoster, its attorney, prays that a writ of certiorari issue to review the judgment of the New York State Court of Appeals affirming the judgment of the Appellate Division of the New York State Supreme Court which reversed the judgment of New York State Court of Claims and dismissed the claim of the petitioner.

Opinions Below.

The Court of Appeals unanimously affirmed the Appellate Division (pp. , *infra*) without opinion in 13 N. Y. 2d 1031, 245 N. Y. S. 2d 602. The unanimous opinion of the Appellate Division of the Supreme Court (Appendix, p. , *infra*) is reported in 18 A. D. 2d 943, 237 N. Y. S. 2d 682. The Court of Claims granted the award without opinion.

Jurisdiction.

The judgment of the Court of Appeals was entered on November 21, 1963. The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

Question Presented.

Whether a state may appropriate lands of a public school district under the power of eminent domain for state highway purposes without the payment of compensation under the Fifth and Fourteenth Amendments to the United States Constitution.

Rules Involved.

The Fifth Amendment to the Constitution of the United States provides in pertinent part:

> "No person • • • shall • • • be deprived of • • • property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> "No State • • • shall • • • deprive any person of • • • property, without due process of law • • •."

Statement.

On March 4, 1958, the State of New York permanently appropriated school lands of the petitioner, a public school district, for the reconstruction of a state highway. The New York State Court of Claims awarded petitioner the sum of $9,000 for direct and consequential damages to its school lands over the objection of the State of New York which claimed such appropriation was *damnum absque*

injuria. The State of New York appealed said judgment to the Appellate Division of the Supreme Court which reversed the judgment and dismissed the claim on the grounds that the lands were held by petitioner for school purposes, in a governmental capacity, and consequently that petitioner was not entitled to compensation upon the taking by the State. Petitioner appealed the judgment of the Appellate Division to the New York State Court of Appeals which affirmed the judgment of the Appellate Division.

The right of the petitioner to compensation for said appropriation under the Constitution of the United States was raised in the Court of Claims by the following objection to the testimony of the petitioner:

> "• • • I will now move that this entire claim be dismissed on the ground that all it amounts to is *damnum absque injuria.* This parcel of ground was being used for governmental purposes, and therefore, the taking by the State is *damnum absque injuria.*
>
> "The Court: The objection is overruled and the motion is denied" (p. , *infra*).

The State's requests to find that the damages were *damnum absque injuria* and that the claim should be dismissed were refused by the Court (p. , *infra*).

The federal question sought to be reviewed, that is, whether land held by a public school district may be taken by the State without payment of compensation, was also raised, both in briefs and oral argument, before the Appellate Division of the Supreme Court and the Court of Appeals. The decisions of the Appellate Division of the Supreme Court and of the Court of Appeals denying compensation to the petitioner and dismissing petitioner's claim appear on their face to allow this Court jurisdiction to review the judgment on writ of certiorari.

Reasons for Granting the Writ.

The ruling of the New York State Court of Appeals has decided a federal question of substance not theretofore determined by this Court or by the Courts of the State of New York. It is contrary to the plain meaning and intent of the Constitution of the United States since it deprives local public school districts of their property without compensation.

The decision, which is likely to be followed in other states of the United States, is of grave importance to the United States for the reason that if it stands, it will permit a state to interfere with the system of public education in any way in which the state may deem it desirable or expedient. The decision would permit a state to completely destroy and convert its public education facilities.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated: February 14, 1964.

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To:

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APPENDIX.

Opinion of Appellate Division, Third Department.

SUPREME COURT,

APPELLATE DIVISION—THIRD JUDICIAL DEPARTMENT.

Decision handed down February 7, 1963.

[SAME TITLE.]

The lands appropriated by filing of map on March 4, 1958, were held by respondent school district for school purposes and thus in a governmental capacity. (*Brush v. Commissioner of Internal Revenue*, 300 U. S. 352, 371; *Matter of Bethlehem Union Free School v. Wilson*, 303 N. Y. 107, 113; *Union Free School District No. 14 v. Village of Hewlett Bay Park*, 279 App. Div. 618, 618-619.) Consequently, the district was not entitled to compensation upon the taking by the State. (*Hunter v. City of Pittsburgh*, 207 U. S. 161, 178-179; *People ex rel. Palmer v. Travis*, 223 N. Y. 150, 166-167.)

Section 3 of the General Municipal Law, providing a different rule in respect of property of a "municipal corporation" appropriated for a "substantially different" purpose was enacted subsequent to the appropriation here but it may nevertheless be noted that, whether through oversight or otherwise, school districts, not included within the definition in Section 2 of the act (and see *Johnston v. Gordon*, 247 App. Div. 40), were not brought within the provisions of Section 3, and although they are treated as municipal corporations for other purposes (General Corporation Law, §3, subd. 2) the section cited must, under Section 6 of the same act, yield to the conflicting provision of the General Municipal Law.

Judgment reversed, on the law, and claim dismissed, without costs.

Bergan, P. J., Gibson, Reynolds and Taylor, JJ., concur.

BRIEF IN OPPOSITION TO PETITION FOR WRIT

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No. 854 October Term, 1963

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Petitioner,

against

THE STATE OF NEW YORK,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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(1)

No substantial federal question was raised in any of the State Courts and, therefore, certiorari does not lie (*Orley Stave Co.* v. *Butler County*, 166 U. S. 648, 655 [1897]; *Herndon* v. *Georgia*, 295 U. S. 441, 442-443 [1935]; *Harding* v. *Illinois*, 196 U. S. 78, 88 [1904]; *Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238, 248 [1902]; *Bowe* v. *Scott*, 233 U. S. 658, 664-665 [1914]). Nor did any of the State Courts pass upon a substantial federal question (*Osborne* v. *Clark*, 204 U. S. 565, 567-568 [1907]; *Minnesota* v. *National Tea Co.*, 309 U. S. 551, 554 [1940]; *Perkins* v. *Benguet Mining Co.*, 342 U. S. 437, 441-443 [1952];

Charleston Federal Savings & Loan Association v. *Alderson*, 324 U. S. 182, 186 [1945]).

(2)

Assuming, *arguendo*, that the question had been presented and passed upon, the judicial determination of compensability or the extent thereof does not create any question under the Fifth Amendment or the Fourteenth Amendment of the Federal Constitution. The question of whether an injury is *damnum absque injuria* or the question of the amount of compensation which is to be paid to an owner by reason of an act of eminent domain is a judicial question (*Chicago, B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226, 246 [1897]; *McCoy* v. *Union Elevated R. R. Co.*, 247 U. S. 354, 363 [1918]). "When property is taken by eminent domain * * * there must be something more than an ordinary honest mistake of law in the proceedings for compensation before a party can make out that the State has deprived him of his property unconstitutionally" (HOLMES, J., in *McGovern* v. *City of New York*, 229 U. S. 363, 370-374 [1913]).

(3)

In any event, a municipal corporation, such as the petitioner, created by a State for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator (*Williams* v. *Mayor*, 289 U. S. 36, 40 [1932]; *Newark* v. *New Jersey*, 262 U. S. 192, 196 [1923]).

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: Albany, New York, February 21, 1964.

Respectfully submitted,

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